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In re Application of LEE et al
U.S. Application No.: 10/500,168
PCT Application No.: PCT/KR02/01830
Int. Filing Date: 27 September 2002
Priority Date Claimed: 31 December 2001
Attorney Docket No.: 51876P637
For: APPARATUS AND METHOD FOR
ABSTRACTING MOTION PICTURE
SHAPE DESCRIPTOR. . . .

DECISION

This is in response to applicant's "Petition Pursuant to Rule 1.10(c)" filed 07 September 2004.

BACKGROUND

On 27 September 2002, applicant filed international application PCT/KR02/01830, which claimed priority of an earlier Korea application filed 31 December 2001. A copy of the international application was communicated to the USPTO from the International Bureau on 10 July 2003. The thirty-month period for paying the basic national fee in the United States expired on 30 June 2004.

On 22 June 2004, applicant purportedly filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 07 September 2004, applicant filed the present petition under 37 CFR 1.10(c).

On 28 September 2004, the DO/EO/US mailed a Notice of Acceptance of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903), which indicated that the application had a receipt date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 23 June 2004.

DISCUSSION

MPEP 1805 states in part, "[T]he 'Express Mail' provisions of 37 CFR 1.10 apply to the filing of all applications and papers filed in the U.S. Patent and Trademark Office, including PCT international applications and related papers and fees."

37 CFR 1.10(c) states,

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

With regard to item (1) above, the petition was filed promptly after the receipt date of the national stage papers was accorded.

With regard to item (2) above, although the petition states that the Express Mail mailing label number was placed on the correspondence, it is not apparent which document the petition is referring to. Applicant should identify the particular document which purportedly bears the Express Mail mailing label number.

With regard to item (3) above, although the petition states that it is accompanied by a copy of the Express Mail mailing label, such copy does not appear in the application file.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.10(c) is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(c)".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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